

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHARON SOLOMON,

Plaintiff,

-against-

SOUTHAMPTON UNION FREE SCHOOL
DISTRICT,

Defendant.

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LINDSAY, Magistrate Judge:

Before the court is the defendant's letter application dated February 12, 2010, seeking to compel the production of a three page draft affidavit that non-party Ann Van Cleef brought to her deposition. The draft affidavit was marked at Ms. Van Cleef's deposition and retained by plaintiff's counsel, who prepared the document and claimed that it was covered by the work product doctrine. The defendant contends that notwithstanding the plaintiff's assertion of privilege, the document is discoverable under Rule 612 of the Federal Rules of Evidence. The court disagrees.

Rule 612, which addresses the production of writings used to refresh a witness' memory, is inapplicable. It is clear from both the deposition transcript and Ms. Van Cleef's letter to the court that the draft affidavit was not used to refresh her memory. In fact, Ms. Van Cleef determined that it was "useless" because it contained several inaccuracies and misrepresentations. Given that the draft was not adopted by Ms. Van Cleef and, in fact, was repudiated as inaccurate, this court can find no basis to order its production. Accordingly, the defendant's request to have the affidavit produced is denied as irrelevant.

Dated: Central Islip, New York
March 2, 2010

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge